

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
Apple Canyon Utility Company; Cedar	:	
Bluff Utilities, Inc.; Charmar Water	:	06-0360
Company; Cherry Hill Water Company;	:	
Northern Hills Water and Sewer Company	:	
	:	
Citation for failure to comply with	:	
Commission Order and with Commission	:	
rules.	:	

ORDER

By the Commission:

The Procedural History

On April 7, 2006, the Staff of the Financial Analysis Division ("Staff") of the Illinois Commerce Commission ("Commission") issued a Staff Report regarding whether Apple Canyon Utility Company; Cedar Bluff Utilities, Inc.; Charmar Water Company; Cherry Hill Water Company; and Northern Hills Water and Sewer Company (collectively "the Companies") maintained continuing property records, as was required by the final Order in docket 03-0398. All of these companies are subsidiaries of a holding company, Utilities, Inc. ("UI"). In that Report, Staff recommended that the Commission initiate a citation proceeding to determine whether the Companies complied with the Commission's final Order in Docket No. 03-0398, as well as with 83 Ill. Adm. Code 605, and 83 Ill. Adm. Code 615, and to determine what penalties should attach, if any.

The Commission then issued a Citation Order, dated May 3, 2006, requiring a proceeding to commence to determine whether the Companies failed to maintain continuing property records, as was required by that Order and Commission regulations. (83 Ill. Adm. Code 605.10, and 83 Ill. Adm. Code 615, Appendix A). The Citation Order also required a determination as to whether penalties should be imposed pursuant to Section 5-202 of the Public Utilities Act, if any. The Companies filed a Verified Answer on June 12, 2006.

Pursuant to proper legal notice, an evidentiary hearing was held in this matter before a duly authorized Administrative Law Judge of the Commission on December 6, 2006. Steven M. Lubertozi, the Chief Regulatory Officer for UI and its subsidiaries, testified on behalf of the Companies. Diana Hathhorn, an accountant in the Commission's Financial Analysis Division, testified on behalf of Commission Staff. At

the conclusion of the hearing on December 6, 2006, the record was marked "Heard and Taken."

The Parties' Positions

Staff's Position

Ms. Hathhorn testified that on April 7, 2004, the Commission entered a final Order in 03-0398 approving a general increase in water and/or sewer rates. (Staff Ex. 1.0 at 2-3.) That Order attached several conditions to approval of the Companies' proposed rate increases, including:

Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company, and Northern Hills Water and Sewer Company shall establish and maintain continuing property records ["CPRs"] in compliance with the Commission's rules, and must file a report with the Manager of the Commission's Accounting Department as to the successful implementation of the property record program within 12 months after the final order in this proceeding.

(Order, docket No. 03-0398 at 26). The deadline specified for filing this Report was April 7, 2005. However, the Companies did not file a Report until July 13, 2006, well over one year after the deadline. (*Id.* at 3.)

Ms. Hathhorn explained that the CPR Report filed by the Companies on July 13, 2006, establishes that the Companies now have CPRs that are updated for the years 2004, 2005, and 2006 to date. However, the Companies confirmed in Staff data request response DLH-2.01 that their database for continuing property records has not yet been updated for the years before 2004. (Staff Ex. 1.0 at 3).

Ms. Hathhorn also testified as to the reason utilities are required to keep continuing property records. Continuing property records show the history of individual assets. According to the Uniform System of Accounts for Water Utilities, 83 Ill. Adm. Code 605, continuing property records are a system of preserving the original cost of plant in a manner so that it is possible to identify, locate, and obtain the cost and age of all used and useful property. Proof of the value of utility assets should be readily available on the books of a regulated utility. This information is required when a determination is made as to whether an investment is prudent and thus should be capitalized. It also is required when quantifying capitalization. (ICC Staff Ex. 1.0 at 3-4). She stated that without continuing property records, the Companies violated 83 Ill. Adm. Code 615. (*Id.*).

Ms. Hathhorn stated that, in the past rate cases, UI subsidiaries have failed to maintain continuing property records. This failure resulted in personnel at UI subsidiaries being unable to locate invoices to support rate base additions. Thus, in UI rate case previous to docket 03-0398, the Commission disallowed unsupported rate base. (Staff Ex. 1.0 at 5). A continued failure to establish and maintain CPRs will result in the same problem being repeated in the next rate case filed by a UI subsidiary. (*Id.*).

Ms. Hathhorn explained that the Companies have made progress with their CPRs but, they are not yet complete. (*Id.*) Therefore, she recommended that the Commission find in this docket that the procedure that has been used in the past rate cases, to disallow rate base additions that have no CPR evidentiary support, will be followed in future rate cases. (*Id.*).

She also asserted testified that the Commission has the authority to impose civil penalties upon the Companies pursuant to Section 5-202 of the Act, in accordance with the criteria set forth in Section 5-203 of the Act. Those criteria are: (a) the appropriateness of the penalty to the size of the business of the public utility; (b) the gravity of the violation; (c) any other mitigating or aggravating factors as the Commission may find to exist; and (c) the good faith of the public utility in attempting to achieve compliance after notification of a violation. (Staff Ex. 1.0 at 6).

With regard to the size of the Companies, Ms. Hathhorn noted that the Companies here are wholly-owned subsidiaries of UI, and together, these five companies provide water and/or sewer service to approximately 1,500 customers in various Illinois counties. (Staff Ex. 1.0 at 6). Ms. Hathhorn stated that the parent company here, UI, is not a "small utility" as is defined by the Public Utilities Act. It has 24 Illinois subsidiaries, with 17,400 customers in this state. Also, UI owns and operates approximately 81 water and/or wastewater systems in seventeen different states. In Ms. Hathhorn's opinion, the size of the Companies' parent, UI, is an aggravating factor that the Commission should consider. (*Id.*).

As for the gravity of the violation, she testified that failure to maintain continuing property records in compliance with Parts 605 and 615 results in the Companies being unable to support increases to plant for plant additions that were made since the Companies' last rate case. (*Id.*, at 7). Ms. Hathhorn explained that if the Companies continue to maintain the CPRs on a prospective basis, they will have evidentiary support for all plant additions from 2004 to the present. (*Id.*).

Regarding good faith, Ms. Hathhorn asserted that the final order in docket 03-0398 was not the first time that the Commission has required a UI subsidiary to maintain a CPR system. (Staff Ex. 1.0 7-8). The Commission's Order in Apple Canyon Utility Co., docket 94-0157, (March 22, 1995, 1995 Ill. PUC Lexis 203) required some UI subsidiaries to maintain Continuing Property Records using the "Will County Continuing Property Records" as a model. (*Id.*). In addition, Ms. Hathhorn stated that the Companies were not diligent in complying with the final Order in docket 03-0368, because that Order required the Companies to file a report establishing successful implementation of CPRs by April 7, 2005. However, the Companies did not meet that deadline and instead filed several motions for extension of time to comply with the Order. (*Id.*).¹

¹ The Administrative Law Judge was never served with a copy of any of these motions. As a result, these motions were never granted.

Ms. Hathhorn recommended that the Commission impose a penalty on each of the five Companies in the amount of \$1,000, for a total of \$5,000. (Staff Ex. 1.0 at 9). She stated that it was not Staff's desire to impose a large fine. Rather, imposition of the fine here is to make it clear that this Commission requires utilities to follow its rules and orders. (Tr. 39). She further recommended that, in the final Order in this proceeding, the Commission advise the Companies that all of UI's Illinois subsidiaries must comply with the Commission's rules regarding the maintenance of CPRs, or, risk being subject to disallowances of plant additions to rate base in future rate cases.

The Companies' Position

Mr. Lubertozi testified that after the final Order in docket 03-0398, UI created an in-house database system, which would interface with UI's existing systems and its software and hardware. This database system was designed to contain the information required for CPRs for UI's subsidiaries. (UI Ex. 1.0 at 2-3). However, there was an unanticipated delay in getting the data entry work done. The hardware and software that UI and its subsidiaries use to track certain general ledger additions is a very old system. It was not designed to be able to add the information that is required for continuing property records. (Tr. 45). Therefore, UI's management had its IT Department create a log-in screen. UI's IT Department also created ways that personnel can track and try to control who implemented data and match that information with information found on the general ledger. (*Id.*).

The biggest problem encountered was tracking invoices and general ledger additions for 400 subsidiaries throughout the United States. It often took four to five hours, or more, to search the system just to find one invoice in order to match up a vendor with the corresponding dollar amount. Thus, dealing with problems with the older system took much longer than the amount of time that was originally anticipated. (*Id.*). As a result, the Companies were unable to meet the April 7, 2005 deadline for CPR implementation set forth in the final Order in docket 03-0398. (*Id.*).

Mr. Lubertozi explained that UI subsidiaries have now developed a CPR system that is currently in place and functioning. This system has been implemented retroactively through 2004. (UI Ex. 1.0 at 3). In the Companies' CPR Report, the Companies explained that UI's management team has met with various consulting firms to discuss acquiring new data management systems, including a new general ledger and billing systems. Also, the new data management and billing systems can create, track, store and generate continuing property records. (*Id.*).

The Companies contended, in their Answer, that it made good faith attempts to inform the Commission of the delay, which is a mitigating factor. (*Id.* at 4-5). Also, UI, the Companies' parent, was also recently acquired by a new parent, Hydrostar, LLC. (UI Ex. 1.01). This new parent is committed to upgrading the hardware and software of data management systems to improve functionality and to improve the reporting process, which will prevent data processing bottlenecks for UI's subsidiaries in the future. (*Id.*).

With respect to Staff's recommendations, the Companies agreed that all of UI's regulated Illinois subsidiaries will not seek rate base additions that are not supported by CPRs. (UI Ex. 1.0 at 4). Further, for the purposes of resolving this proceeding, the Companies agreed to pay civil penalties of \$1,000 per Company, for a total of \$5,000 for all of the Companies in question. (*Id.*).

The Companies also asserted that implementation of the CPR system described in UI Exhibit 1.01 will occur for all of its Illinois subsidiaries. They further agree that no UI subsidiary will seek rate base additions that are not supported by CPRs. (UI Ex. 1.0 at 4).

Analysis and Conclusions

Based on the record, the Commission finds that the five UI subsidiaries at issue, Apple Canyon Utility Company; Cedar Bluff Utilities, Inc.; Charmar Water Company; Cherry Hill Water Company; and Northern Hills Water and Sewer Company, failed to file the CPR Report on April 7, 2005 as was required by the final Order in docket 03-0398. In fact, this Report was not filed until July 13, 2006, fifteen months after the time it was due to be filed. However, the Companies now have CPRs in place for 2004 to the present. Therefore, the Companies are now in partial compliance with the final Order in docket 03-0398, as well as the Commission's rules regarding CPRs, at least with respect for the year 2004, and forward.

With respect to CPRs for the years before 2004, the Companies contend that they, and their sister companies, intend to implement CPRs for the years previous to 2004. In light of this, the Commission finds that Staff's proposal, which the Companies have accepted, to disallow rate base additions that have no CPR evidentiary support in future rate cases filed by UI subsidiaries, is reasonable.

This Commission has authority pursuant to Section 5-202 of the Public Utilities Act to assess penalties upon any public utility when it violates or fails to comply with any provision of the Public Utilities Act, or fails to comply with any Commission Order, rule, or regulation. (220 ILCS 5/5-202). Staff recommended civil penalties of \$1,000 for each of the Companies, for a total of \$5,000 for all the Companies. The Companies have agreed to pay these penalties.

Penalties are assessed pursuant to Section 203(a) of the Public Utilities Act, which provides, in pertinent part:

In determining the amount of the penalty, the Commission shall consider the appropriateness of the penalty to the size of the business of the public utility, corporation other than a public utility, or person acting as a public utility charged, the gravity of the violation, such other mitigating or aggravating factors as the Commission may find to exist, and the good faith of the public utility, corporation other than a public utility, or person acting as a public utility charged in attempting to achieve compliance after notification of a violation.

(220 ILCS 5/4-203(a)). We note that Staff reported that the five Companies together provide water and/or sewer service to approximately 1,500 customers in various Illinois counties. The Companies are thus "small utilities" under Section 4-502 of the Act. (220 ILCS 5/4-502).

As for to the gravity of the violation, Staff posits that failure to maintain CPRs results in an inability on the part of the Companies to support increases to plant for plant additions made since their last rate cases. However, according to the Companies, except when a utility makes a rate filing, failing to maintain CPRs has no significant adverse impact on customers. We note that there is no evidence establishing that customers were harmed. However, the Companies must fully comply with the Act, the Commission's rules, and its Orders.

With regard to other aggravating factors, Staff asserted that the parent company, UI, is not a small utility as defined by the Act, as it has twenty-four subsidiaries, with 17,400 customers in Illinois. This fact, Staff maintains, is an aggravating factor. However, Mr. Lubertozi's testimony established that the Companies encountered unexpected difficulty when entering data for the CPRs, causing delay. (See, Tr. 44-46). We also note that the Companies have expressed a commitment to support all plant additions in all rate cases filed by UI subsidiaries. The Commission concludes that the commitment expressed in this proceeding to implement CPRs across all of UI's Illinois subsidiaries, as well as the commitment not to seek rate base additions that are not supported by CPRs, is sufficient to alleviate Staff's concerns. We also note that, irrespective of the commitment expressed, the law requires utilities to maintain CPRs. (83 Ill. Adm. Code 605.10, 83 Ill. Adm. Code 615 Appendix A).

With regard to good faith, Staff questioned the Companies' diligence and good faith in coming into compliance with the CPR requirements, noting that Commission Orders dating back to 1995 have required implementation of CPRs. We also note that a series of motions requesting extensions of time to file the Report in question were filed. Because none of these motions were served on the Administrative Law Judge, none were granted. The diligence of these Companies is questionable, when they continued to file motions seeking extension of time, even after previous motions seeking extensions had not been granted. However, the Companies have agreed to pay the penalty recommended by Staff. Therefore, the Commission finds that the assessment and the amount of the penalties appropriate for the gravity of the violation here. We therefore conclude that the penalty of \$1,000 per Company is reasonable.

We note that the parties are in agreement as to the two issues here, whether a fine should be imposed, and how much that fine should be. Yet, they filed prefiled testimony. The attorneys are advised, in future situations of this nature, to consider stipulations, and other types of resource-saving procedures, such as, motions brought pursuant to Sections 2-615(e) or 2-1005 of the Illinois Code of Civil Procedure. (735 ILCS 5/2-615(e) and 2-1005)).

Findings and Ordering Paragraphs

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company provide water and/or sewer service to the public within the State of Illinois, and, as such, are “public utilities” within the meaning of the Public Utilities Act;
- (2) the Commission has subject-matter jurisdiction and jurisdiction over Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company;
- (3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law for purposes of this Order;
- (4) in future rate cases involving any subsidiary of Utilities, Inc., including, but not limited to, Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company, rate base additions shall be supported with continuing property record evidentiary support;
- (5) pursuant to Section 5-202 of the Act, Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company are each required to pay a civil penalty of \$1,000 each, for a total of \$5,000.

IT IS THEREFORE ORDERED by the Commission that in future rate cases involving Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company, or any other Utilities, Inc. subsidiary, rate base additions shall be supported with continuing property records.

IT IS FURTHER ORDERED that pursuant to Section 5-202 of the Public Utilities Act, Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company are each hereby assessed a fine in the amount of \$1,000.00, for a total amount of \$5,000.00. Said fines shall be paid by check payable to the Illinois Commerce Commission and delivered to the Financial Information Section of the Commission's Administrative Services Division within thirty (30) days of the entry of this Order.

IT IS FURTHER ORDERED that Cedar Bluff Utilities, Inc., Apple Canyon Utility Company, Charmar Water Company, Cherry Hill Water Company and Northern Hills Water and Sewer Company shall file with the Commission's Chief Clerk a certification

attesting that each Company has paid the ordered fine. Said certification is to be filed in Docket No. 06-0360, served upon the parties to this docket and a copy is to be provided to the Manager of the Commission's Water Department within thirty (30) days of the entry of this Order.

IT IS FURTHER ORDERED that any petitions, objections or motions made in this proceeding and not otherwise specifically disposed of herein are hereby disposed of in a manner consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 21st day of March, 2007.

(SIGNED) CHARLES E. BOX

Chairman